

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17184 of 2013 (O/M)
Date of decision : 23.11.2016

Surinder Kaur Mamik

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. T.C. Dhanwal, Advocate, for the petitioner.

Mr. Anshul Gupta, Assistant A.G. Punjab.

Mr. R. Kartikeya, Advocate, for respondents No. 3 and 4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

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KULDIP SINGH J. (ORAL)

The petitioner, Surinder Kaur Mamik, is a retired Superintendent from the Board of Ayurvedic and Unani Systems of Medicines, Punjab-respondent No. 4 herein (in short 'the Board'), which is constituted under the provisions of Punjab Ayurvedic and Unani Practitioners Act, 1963 (in short 'Ayurvedic and Unani Practitioners Act'). The functioning of the Board is regulated by the said Ayurvedic and Unani Practitioners Act. The petitioner was appointed as a Clerk on 22.12.1971 by the Board of said Ayurvedic and Unani Systems of Medicines, Punjab. Her services were terminated on 31.3.1973. She was re-appointed on 18.5.1973 against the regular post of Clerk. The services of the petitioner were again retrenched, vide letter dated 4.10.1977. However, she was again appointed as a Clerk being the employee of the Board of Ayurvedic

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and Unani Systems of Medicines, Punjab, by the Punjab Medical Council, Mohali, with effect from 3.4.1978 (FN), vide order dated 24.4.1978 being retrenched employee of the Board. It is pointed out by the learned counsel for the petitioner that the petitioner was not appointed in the Punjab Medical Council, Mohali, being a retrenched employee of the Board. She was again appointed in the said Ayurvedic and Unani Systems of Medicines, Punjab, on transfer basis to the post of clerk, vide office letter dated 5.8.1980 and she joined as such on 14.5.1980. The petitioner retired from service as a Superintendent on 31.8.2010. The petitioner has placed reliance upon the Division Bench judgment of this Court, passed in CWP-12275-1998, titled as Roshan Lal Sharma Versus State of Punjab and others, whereby the writ petition of the similarly situated employee was allowed, vide order dated 11.10.2000 (Annexure-P-17) and the order dated 5.6.1998, passed by the Registrar of the Council was quashed and the Punjab Nurses Registration Council was directed to release the gratuity within three months of the receipt of the copy of the order. Thereafter, the petitioner made several representations to the respondents, on which a speaking order endorsed on 26.6.2013 (Annexure-P-14) was passed by respondent No. 3. The petitioner claims that she has been granted the gratuity to the tune of Rs. 10 lacs, as per the Government letter 17.8.2009 (Annexure-P-5). However, she should have been granted the gratuity under Rule 18 of the Notification dated 10.5.1976 (Annexure-P-6), notifying the Rules called 'The Ayurvedic and Unani Systems of Medicines (Employees Conditions of Service) Rules 1976 (in short 'the Service Rules of 1976'), which provides that the gratuity to be equal to one month's salary last drawn by an employee at the time of his retirement for each completed year of his service under the Board.

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The respondents in the reply has stated that in the said Service Rules of 1976, under Rule 15, the Punjab Civil Services Rules will apply in those matters, which are not covered under the Services Rules of 1976. It is stated that the limit of the DCRG for the employees of the answering-Board is same as prescribed for similarly placed Punjab Government employees upto the completed service of 5 years even for those, who die during service. It is stated that in this case, applying the Punjab Government Services Rules, the gratuity, which was earlier 3.5 lacs was revised to Rs. 10 lacs and the said gratuity, which is the maximum admissible in case of Punjab Government employees, has been released to the petitioner, which is much more than the gratuity provided under Rule 18 of Service Rules of 1976.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The short question before this Court is as to whether the petitioner is entitled to the gratuity under the Services Rules of 1976 or under the Punjab Civil Services Rules ?

Admittedly, the Notification of the Punjab Government dated 17.8.2009 (Annexure-P-5) is regarding the Punjab Government employees. The petitioner was working under the Board of Ayurvedic and Unani Systems of Medicines, Punjab and her services are governed by the Services Rules of 1976. Rules 15 and 18 of the Service Rules of 1976, are reproduced as under :-

“15. In respect of pay, leave and all other matters not expressly provided for in these rules, the members of the Service shall be governed, as far as may be, by such rules and regulations as may have been adopted or made for Punjab

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Government employees of the same status by the competent authority under the Constitution of India or under any law for the time being in force made by the State Legislature and the rules made thereunder.

16. xxxxxx xxxxxx xxxxxx

17. xxxxxx xxxxxx xxxxxx

18. Every employee shall be entitled to gratuity equal to one month's salary last drawn by at the time of retirement for each completed year of his service under the Board ;”

The joint reading of the said rules shows that if the gratuity was not provided for in the rules, the Punjab Civil Services Rules will apply. However, in the present case, since the gratuity itself is provided under Rule 18 of the Service Rules of 1976, therefore, the gratuity is to be released as per Rule 18 of the Services Rules of 1976 notwithstanding any provision in the Punjab Civil Services Rules, which may reduced or enhanced the gratuity.

Now, coming to the speaking order dated 26.6.2013 (Annexure-P-14), this Court is to see whether the gratuity has been released in accordance with Rule 18 of the Service Rules of 1976 or not ?

The service history of the petitioner shows that after the earlier retrenchment and termination, the petitioner again joined the Board of Ayurvedic and Unani Systems of Medicines, Punjab, on 14.5.1980. The respondent-Board has treated the service of the petitioner from February, 1985 to August, 2010, treating it to be 25 years of service on the ground that the temporary service of the petitioner is not covered under the gratuity rules. The relevant extract from the speaking order dated 26.6.2013 (Annexure-P-14) is reproduced as under :-

“9. Her previous service was not at any time confirmed by the Board and her services remained on temporary basis.

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Temporary period of service is not covered under the gratuity rules. According to confirmation orders your service period which can be counted for the purpose of gratuity was from February 85 to August, 2010, which amounts to be a total of 25 years' service at your credit.”

I am of the view that in the said speaking order itself, it is mentioned that the petitioner joined the post of Clerk on 14.5.1980. The service whether the same is temporary or adhoc, which is followed by regularization, is to be computed for the purpose of retiral benefits. It was a case of regular appointment and the entire service from 14.5.1980 till retirement of the petitioner in August, 2010, is to be treated for computing the retiral benefits. Therefore, the respondents erred in computing the gratuity on the basis of service from February, 1985 to August, 2010, and it is to be computed under Rule 18 of the Service Rules of 1976 from 14.5.1980 till the retirement of the petitioner i.e. 31.8.2010. In the present case, the petitioner has not claimed the benefit of earlier service rendered by her under the Board of Ayurvedic and Unani Systems of Medicines, Punjab, and Punjab Medical Council.

Hence, the present writ petition is allowed. The respondents are ordered to treat the entire service of the petitioner from 14.5.1980 till her retirement on 31.8.2010 for computing the retiral benefits and release the gratuity in terms of Rule 18 of the Service Rules of 1976.

(KULDIP SINGH)
JUDGE

23.11.2016
sjks

Whether speaking / reasoned	:	Yes
Whether Reportable	:	Yes